HONGKONG AND SHANGHAI BANKING CORPORATION v. GOH SU LIAT (TELECOMMUNICATION AUTHORITY OF SINGAPORE, GARNISHEE)

[O.C.J. (Chua J.) October 31, 1985]

[Singapore – Suit No. 5983 of 1985]

Practice and Procedure – Judgment debt – Garnishee order to show cause and garnishee order absolute – Whether judgment debtor has right to apply to Court to set aside – When salary becomes attachable – R.S.C. 1970, O. 49 r. 3(1), (2), O. 92.

In this case, the judgment debtor was employed as a Senior Telecoms Operator-In-Charge with the Telecommunication Authority of Singapore (the garnishee). In June 1985, the judgment creditor commenced an action against the judgment debtor for the sum of $14,102.88 and interest being the sum due from the judgment debtor's MasterCard and Visa card issued to the judgment debtor by the judgment creditor. Judgment in default of appearance was entered against the judgment debtor for the sum claimed, interest and costs on July 29, 1985.

The judgment creditor applied *ex parte* by summons for and obtained on September 6, 1985, a Garnishee Order To Show Cause calling upon the garnishee to show cause and the garnishee was required to attend before the Assistant Registrar on Friday, September 27, 1985. On October 4, 1985, the hearing day, only the judgment creditor appeared, whereupon the Assistant Registrar made a Garnishee Order Absolute against the garnishee ordering the garnishee to pay forthwith to the judgment creditor the sum of $967.70, being the judgment debtor's net salary for the month. The judgment debtor appealed against the decisions of the Assistant Registrar given on September 6, 1985 and October 4, 1985.

Held: (1) the judgment debtor has a right to apply to the Court to set aside the Garnishee Order To Show Cause and the Garnishee Order Absolute [Order 49 rule 3(1)];

(2) the Court can hear the judgment debtor's application under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court (Order 92 rule 4);

(3) the judgment debtor's October salary was not due until October 31, 1985. So at the date of the Garnishee Order Absolute, October 4, 1985, there was no attachable debt. Even an existing right under which something is accrued which will probably become a debt at some future date is not sufficient notwithstanding that the amount to become due is capable of being calculated with precision.

Cases referred to:

(1) *Jones* v. *Thompson* (1858) El. Bl. & El. 63; 120 E.R. 430.
(2) *Hall* v. *Pritchett* (1877) 3 Q.B.D. 215.
(3) *Mapleson* v. *Sears* (1911) 105 L.T. 639.

CIVIL SUIT.

Michael Kuah Kim Huat for the judgment creditor.

S. Balasubramaniam for the judgment debtor.
A. G. Ram for the garnishee.

Cur. Adv. Vult.

Chua J. : In June 1985 the judgment creditor commenced an action against the judgment debtor for the sum of $14,102.88 and interest being the sum due from the judgment debtor's MasterCard and Visa Card issued to the judgment debtor by the judgment creditor. Judgment in default of appearance was entered against the judgment debtor for the sum claimed and interest and costs on July 29, 1985.

The judgment debtor is employed as a Senior Telecoms Operator-In-Charge with the Telecommunication Authority of Singapore (the garnishee).

The judgment creditor applied *ex parte* by summons for and obtained on September 6, 1985, a Garnishee Order To Show Cause calling upon the garnishee to show cause and the garnishee was required to attend before the Assistant Registrar on Friday, September 27, 1985. However, the hearing was not till October 4, 1985, when only the judgment creditor appeared, whereupon the Assistant Registrar made a Garnishee Order Absolute against the garnishee ordering the garnishee to pay forthwith to the judgment creditor the sum of $967.70, being the judgment debtor's net salary for the month of October 1985, and costs.

The judgment debtor now appeals against the decisions of the Assistant Registrar given on September 6, 1985, and October 4, 1985.

Counsel for the judgment creditor says that it is doubtful that the judgment debtor can come forward to dispute the debt when the garnishee is not disputing. He argues that a garnishee proceeding is between a judgment creditor and the garnishee only. As he puts it, "the main fight is between the garnishee and the judgment creditor".

I am of the view that the judgment debtor has a right to apply to the Court to set aside the Garnishee Order To Show Cause and the Garnishee Order Absolute.

Order 49 rule 3(1) provides that the order to show cause must, at least seven days before the time appointed thereby for the further consideration of the matter, be served not only on the garnishee but also on the jugment debtor unless the Court otherwise directs. It seems to me that a

judgment debtor can attend before the Court to state his objection to the garnishee order *nisi* being made absolute. In this case the Garnishee Order To Show Cause was not served on the judgment debtor.

In any case the Court can hear the judgment debtor's application under its inherent powers and make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court (Order 92 Rule 4).

Counsel for the judgment debtor submits that a salary or other periodic payment of a similar nature is only attachable when it becomes a debt but not before and cites as his authorities paragraph 531 of Vol. 17 *Halsbury's* Laws of England 4th edn. at page 330 and the cases of *Jones* v. *Thompson*[1], *Hall* v. *Pritchett*[2] and *Mapleson* v. *Sears*.[3]

The headnotes of *Hall* v. *Pritchett* reads:

"The salary of a medical or other officer cannot, before it is actually payable, be attached by a garnishee order under the County Court Rules, 1875, for it is not 'a debt, owing or accruing' to the judgment debtor.
Jones v. *Thompson* followed."

Counsel for the judgment creditor seeks to distinguish the cases cited by the counsel for the judgment debtor stating that those cases are all cases of Writ of Seizure and Sale and not applicable to garnishee proceedings.

In my view the submission of counsel for the judgment debtor is correct.

There is no dispute that the judgment debtor's October salary was not due until October 31, 1985. So at the date of the Garnishee Order Absolute, October 4, 1985, there was no attachable debt. Even an existing right under which something is accrued which will probably become a debt at some future date is not sufficient notwithstanding that the amount to become due is capable of being calculated with precision (17 *Halsbury's* paragraph 527).

Counsel for the judgment creditor argues that the relevant date is the service of the Garnishee Order To Show Cause, as on that date the Court considered that there was an attachable debt and that the Garnishee Order Absolute is really irrelevant as it merely confirms the existence of an attachable debt. He submits that under Order 49 rule 3(2) the garnishee order *nisi* "shall bind in the hands of the garnishee as from the service of the order on him any debt specified in the order or so much thereof as may be specified." He says that as the order *nisi* was made in September the debt to be attached must be the September salary and that is supported by the affidavit filed in support of the application for the order *nisi*.

The argument of counsel for the judgment creditor is untenable. The Garnishee Order To Show Cause does not specify that the judgment debtor's September salary is in the meantime attached. The Garnishee Order Absolute clearly attaches the October salary of the judgment debtor. Before the Assistant Registrar on October 4, 1985, it was the judgment creditor who asked for the attachment of $967.70, the net salary of the judgment debtor for the month of October and not September, and the Assistant Registrar made the order.

The appeal is allowed with costs and the Garnishee Order To Show Cause and the Garnishee Order Absolute are set aside.

Appeal allowed.

Solicitors: *Lee & Lee; S. Bala & Associates.*

POLYGRAM RECORDS SDN. BHD. & ORS. v. PHUA TAI ENG

[O.C.J. (Thean J.) December 6, 1985]

[Singapore – Suit No. 2605 of 1984]

Contempt of Court – Injunction – Failure to comply with Order – Pirated copies of sound tapes – Standard of proof.

Copyright – Pirated copies of sound tapes seized – Copyright of recordings of songs – Whether sound tapes copies or substantial copies of recordings – U.K. Copyright Act, 1911, ss. 5(1), 19(1).

This is an application by the plaintiffs for an order of committal against the defendant for contempt of court for failing to comply with an Order dated April 26, 1984 ("the Order"). The Order was an injunction restraining the defendant from infringing the plaintiffs' copyright of recordings of certain songs and to place into custody of the plaintiffs' solicitors all pirated copies of those recordings. By an order made on January 11, 1985 the interim injunction was continued until the trial of the action or until further order. The plaintiffs alleged that the defendant had breached the Order by offering for sale and selling